

tuting for Mr. Rothermel she performed only one day's service in March in that position. It can not be viewed as a part of a month's service by her controlled by the act of 1903, *supra*, but is purely a day's service and entitled to be paid as such.

The decision of the auditor, that Miss Kingsley was entitled to pay as substitute for Mr. Rothermel March 31, is approved.

LIABILITY FOR REPAIRS AND ALTERATIONS ON BUILDINGS RENTED BY THE GOVERNMENT.

Where a contract entered into by the Government for the renting of a building is witnessed by a written instrument the law presumes that such writing contains the whole of the contract, and it is not permissible to vary or change the terms of such instrument by parol evidence to show that other things not embraced therein are parts of the contract.

The Government is not liable for expenses of permanent improvements, repairs, or alterations made on rented buildings unless such expenses form part of the consideration for the rental.

Decision by Comptroller Tracewell July 26, 1911:

William L. Soleau, disbursing clerk, Department of Commerce and Labor, appealed June 28, 1911, from the action of the Auditor for the State and other Departments in settlement No. 3146, dated December 14, 1910, in disallowing the payment of \$87.53 in voucher No. 145079 of Charles C. Heisen for actual cost of alterations and repairs to office rented by the Immigration Service at Chicago, Ill.

The facts are as follows:

On April 29, 1909, Charles C. Heisen, hereinafter designated as the lessor, entered into a lease by which he agreed to let and lease to the Department of Commerce and Labor certain premises for the term of two months, commencing May 1, 1909, and terminating June 30, 1909, for the sum of \$180, said rent to be paid at the rate of \$90 per month on the 1st day of each month.

In consideration of the above the said lessor agreed to furnish and provide a private toilet room, with running water therein, same to be kept and maintained at all times

during the terms of this lease, or any continuance hereof, in a clean, sanitary, and proper condition.

Said lease also provided that if the Department of Commerce and Labor desired to renew the lease of these premises for the further term of one year from the expiration of the said term granted, the lessor would renew the same under the same terms and conditions as this lease, and at the same rental.

This latter provision simply amounted to an option on the rental of the said premises for the further term of one year.

On July 1, 1909, the policy of the department was changed so that it became unnecessary to have an office in Chicago after that time, and the lessor was accordingly notified.

In reply he stated that he would hold the Government for the rental of the rooms in accordance with the understanding he had with the agent of the Government, Mr. Powderly, to the effect that said premises would be rented by the year.

It is well settled that where a contract for renting is witnessed by a written instrument, such as a lease or other instrument in the nature of a lease, the law presumes that such writing contains the whole of the contract. It is not permissible to vary or change the terms of a written instrument witnessing the terms of a contract by parol evidence to show that other things not embraced therein are parts of the contract. (6 Comp. Dec., 141.)

The lease simply contained the above-mentioned option of renewal and did not have incorporated in it this understanding nor any other provision which would obligate the Government to lease the premises after June 30, 1909.

But in view of this misunderstanding, or, as the disbursing clerk puts it, "in order to tide over a bad situation," a compromise lease was entered into on June 25, 1909, which was intended to replace and serve in lieu of the lease of April 29, 1909. This latter lease eliminated the foregoing option of renewal and stipulated that the cost of installing the private toilet room, painting floors, varnishing partition, and supplying new locks be paid by the Government. In other words, it was intended to reimburse the lessor for the cost of these improvements which he himself had agreed to

make at his own expense in consideration of the agreed rental.

The voucher in question, for \$87.53, was accordingly prepared and paid by the disbursing clerk, disallowed by the auditor, and is now the subject of this appeal.

The general rule with regard to making repairs to private property may be stated to be that the Government is not liable for the expenses of permanent improvements, repairs, or alterations made on a building rented by it unless in the contract for its rental it is part of the consideration for its rental that the Government, as a part or the whole of such consideration, agrees at its own expense to make such improvements, repairs, or alterations.

As the lessor had agreed to make these improvements at his own expense, the later agreement would appear to be unauthorized for want of consideration and as prejudicial to the interests of the Government and the payment of the voucher in question a gratuity. (8 Comp. Dec., 549.)

Therefore upon this revision the action of the auditor is affirmed.
